

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Implementation of Section of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

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MM Docket 92-266

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

**C-TEC CABLE SYSTEMS OPPOSITION TO
PETITION FOR RECONSIDERATION**

C-TEC Cable Systems, by its attorneys, hereby responds to the Petition for Reconsideration filed by the Michigan C-TEC Communities in the captioned proceeding. The Michigan C-TEC Communities object to the Commission's calculation of penetration based on homes in the franchise area rather than homes passed by cable. However, the objection contradicts the plain language of the statute and is not supported by the particular circumstances of even one of the Michigan C-TEC Communities. Therefore, the Commission's acceptance of the plain statutory language, which evaluates penetration based on the number of homes in the franchise area, should be upheld.

Congress decided that areas with less than 30 percent cable penetration should be deemed to be subject to "effective competition" and therefore excused from rate regulation. ^{1/} Congress determined that "'effective competition' is

^{1/} Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 623(l)(1), 106 stat. 1460 (1992) (the "1992 Cable Act").

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established if one of the three . . . tests is fulfilled: (A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of cable system . . ." 2/ There is no need for interpretation here because the statutory language is clear on its face.

Not only does the Michigan C-TEC Communities' argument contradict the plain language of the statute, but the harm that they predict is illusory. Specifically, the Michigan C-TEC Communities make much of their claim that a large percentage of the communities in Michigan would be exempt from rate regulation if penetration were measured based on homes in the franchise area rather than homes passed by cable plant because, they claim, most Michigan communities would have less than 30 percent penetration under this method. 3/ However, not a single community among the Michigan C-TEC Communities has less than 30 percent cable penetration based on the percentage of subscribers in the community's franchise area. 4/ Therefore, the claim upon which the Michigan C-TEC Communities' primary complaint is based -- that measurement of penetration based on subscribers in the franchise area will result in exemptions for up to half of the cable systems in Michigan -- certainly is not borne out by the circumstances of the very communities that predict these widespread exemptions.

The Michigan C-TEC Communities also imply that penetration of less than 30 percent indicates the cable operator has been derelict in its duty to bring cable service to outlying, sparsely populated portions of the community. This is simply not true. First, as stated above, C-TEC has greater than 30 percent

2/ *Id.* (emphasis added).

3/ See Michigan C-TEC Communities Petition for Reconsideration at 3 ("as many as half of Michigan's townships" may be exempted from rate regulation based on the use of the franchise area to evaluate 30 percent penetration).

4/ See Chart attached as Attachment A.

penetration in each of the Michigan C-TEC Communities, regardless of the method used to measure penetration. Second, the average number of subscribers per mile

ATTACHMENT A

<u>Community</u>	<u># Homes in the Community</u>	<u># Homes Passed by Cable</u>	<u>Percent of Homes Passed in Franchise Area</u>	<u># Basic Customers</u>	<u>Percent Penetration (based on Franchise Area)</u>
Allendale Twp.	2150	1758	81.77%	963	44.79%
Coopersville	1213	1212	99.92%	844	69.58%
Manistee	3290	3687	112.07%*/	2523	76.69%
Grand Haven Twp.	3603	3598	99.86%	2822	78.32%
Huron Twp.	3630	3283	90.44%	1920	52.89%
Leighton Twp.	1122	818	72.91%	378	33.69%
Robinson Twp.	1256	1346	107.17%*/	742	59.08%
Sturgis Twp.	753	610	81.01%	453	60.16%
Nashville Village	609	532	87.36%	314	51.56%
Sparta Village	1585	1857	117.16%*/	1125	70.98%
Yankee Springs Twp.	1904	1002	52.63%	674	35.40%
	21115	19703	93.31%	12758	60.42%


*/ The percentage of homes passed in a franchise area may exceed 100% where a given address has more than one potential subscriber such as an office building with multiple tenants.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Petition for Reconsideration was mailed, by first-class mail postage prepaid, this 21st day of July, 1993 to:

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